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FURTHER REPORT OF THE SECRETARY-GENERAL ON THE UNITED NATIONS OBSERVER MISSION IN EL SALVADOR

INTRODUCTION

1. The purpose of the present report is to update the Security Council on the implementation of the recommendations of the Commission on the Truth, which forms part of the Peace Accords for El Salvador. The Commission on the Truth was established in accordance with the Mexico agreements of 27 April 1991 (S/23130) and was entrusted with the task of investigating serious acts of violence that had occurred since 1980 and whose impact on society was deemed to require an urgent and public knowledge of the truth. Under the Mexico agreements, the parties undertook to implement the Commission's recommendations.

2. The Commission released its report on 15 March 1993 (S/25500, annex). It contained some 40 recommendations, listed under four headings:

(a) Recommendations arising directly from the results of the Commission's investigations;

(b) Eradication of structural causes directly connected with the incidents investigated;

(c) Institutional reforms to prevent the repetition of such events;

(d) Measures for national reconciliation.

3. As I pointed out in my report of 21 May 1993 (S/25812, para. 53), the Commission's recommendations require a wide range of administrative, legislative and constitutional measures. Action is required not only from the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (FMLN), but also from individuals and institutions, in particular from the Legislative Assembly and the Commission for the Consolidation of Peace (COPAZ). COPAZ was established by the Peace Accords as a national institution responsible for overseeing implementation of all the agreements and comprises representatives of the Government, FMLN and all political parties represented in the current Legislative Assembly.

4. Following the release of the Commission's report, serious reservations were expressed by the Government regarding the applicability of the Commission's recommendations. Taking into account these reservations and also the number of

institutions involved in the process of implementation, I instructed that a detailed analysis of the recommendations be made. The resulting report, which was made available to the Security Council on 25 May 1993 (S/25812/Add.3), examined whether any of the recommendations was outside the Commission's mandate or incompatible with the Constitution and identified what action was required and by whom (the "addressees") and in what time-frame. On 20 May 1993, I conveyed that analysis to the Government, FMLN and COPAZ and requested each of them to inform me by 20 June 1993 of the action it had taken or planned to take to implement the recommendations for which it was designated as an addressee and to promote the implementation of the other recommendations. In my letters to the Government and FMLN, I stressed the actions which each of them should take to promote those recommendations for which COPAZ is an addressee.

5. The United Nations analysis found that only one of the Commission's recommendations, that concerning disqualification by law from holding public office, could not be implemented as it was at variance with fundamental provisions of the Constitution and conflicted with another recommendation made by the Commission concerning the ratification of international human rights instruments under which citizens cannot be deprived of their political rights in the manner recommended by the Commission.

POSITIONS OF THE GOVERNMENT, FMLN AND COPAZ

6. Since my last report, the Commission's recommendations have been the subject of active exchanges of views and communications between the Secretariat and the Government, FMLN and COPAZ. These have not succeeded in disposing of all the Government's initial reservations. However, I have consistently stressed the unqualified commitment given by the signatories of the Mexico agreements to implement the Commission's recommendations; the United Nations own obligation to verify the signatories' compliance with that commitment; and the need for concrete action by them in implementing measures whose thrust is not the sanctioning of individuals but the prevention of impunity, strengthening the judicial system and promoting the observance of human rights and national reconciliation. ONUSAL has been encouraging the signatories to take that approach and has assisted the various institutions involved in the implementation process. The Human Rights Division, in particular, has been in close contact with the Government on matters related to the implementation of 19 earlier recommendations by the Division, which were endorsed by the Commission on the Truth.

7. The current status of implementation of each of the Commission's recommendations is outlined in a progress report by ONUSAL, which is annexed to the present report. Where implementation of a recommendation involves legislative action, the report indicates whether, in ONUSAL's view, the proposed action fully reflects the Commission's intent.

8. Following my letter of 20 May 1993, the Government, FMLN and COPAZ informed me of their positions with respect to the Commission's recommendations. In a letter dated 11 June 1993, the Coordinator General of FMLN, Mr. Schafik Handal, outlined FMLN's approach to the two recommendations applicable to it. He said that, while disqualification by law from holding public office appeared impossible, FMLN would be ready to accept a procedure of "self-disqualification"

by those FMLN members referred to in the recommendation, provided that the government officials and military officers concerned did likewise. Mr. Handal also referred to efforts made by FMLN to promote the implementation of recommendations addressed to COPAZ.

9. In a letter dated 23 June 1993, the pro tempore Coordinator of COPAZ informed me that, while COPAZ had begun considering the Commission's recommendations in March, a number of issues required further analysis before COPAZ could pronounce itself. However, COPAZ intended to accelerate consideration of the report in order to be able to convey its position to me as soon as possible. Subsequently, on 10 September 1993, I received a preliminary report from COPAZ outlining action taken on all recommendations under headings I and II (see S/25500, annex, sect. V). That report is reflected in ONUSAL's progress report. Another report from COPAZ on the remaining recommendations is expected shortly.

10. Following several exchanges of view between ONUSAL and the Government of El Salvador, President Cristiani stated, in a letter to me dated 13 July 1993, that a comprehensive analysis by the Government of the Commission's recommendations had shown that the Government would be in a position to implement all of them with the exception of those falling in three categories, namely: (a) those involving dismissal from the civil service and disqualification from holding public office; (b) those implying constitutional reforms; and (c) those recommendations whose implementation would have to be initiated and carried out by the Judiciary through the Supreme Court of Justice. These three categories are discussed below.

A. Dismissal and disqualification by law from holding public office

11. COPAZ considered at length the recommendations on these points and reached a common conclusion on them. In a letter dated 9 August 1993, the pro tempore Coordinator of COPAZ informed me that it had agreed "that any solution regarding implementation should be within the framework of guaranteeing full participation by all Salvadorians, without exception, in the country's future and with a view to the broader objective of national reconciliation". Based on that conclusion, COPAZ requested me "to help this institution, created by the Peace Accords as a mechanism representing Salvadorian civil society, to attain the above-mentioned goals".

12. I subsequently received a letter dated 19 September 1993 from FMLN's Coordinator General, in which he stressed that the recommendations on dismissals and disqualification from holding public office were independent of each other. In his opinion, therefore, while disqualification from holding public office was inapplicable, the recommendation regarding dismissal of officers should be carried out. His letter did not express a view about the applicability of the dismissal of civil servants.

13. The mandate entrusted to the United Nations in El Salvador is to verify the parties' compliance with the commitments accepted by them in the Peace Accords and the recommendations of the Commission on the Truth are an integral part of those Accords. While insisting on the signatories' obligation to honour their

commitments under the Accords, I have indicated that, if they and Salvadorian society at large (as represented through COPAZ, for instance) was to agree that specific provisions should not be implemented, I would be prepared to recommend to the Security Council that non-implementation of those provisions should not be regarded as a violation of the Accords. Although not entirely clear, the terms of the letter addressed to me by COPAZ seemed to indicate that a consensus existed that the recommendations contained in sections I A, B and C of the Commission on the Truth's report should not be implemented. However, the subsequent letter of FMLN's Coordinator General raised doubts on this score. I have accordingly decided to seek clarification from COPAZ.

B. Constitutional reform

14. Under the Salvadorian Constitution, constitutional reform requires ratification by two successive legislatures. Therefore, unless the current Legislative Assembly ratifies the constitutional reforms required by the Commission on the Truth, the earliest time they could be implemented would be in 1997, on the assumption that they would be ratified both by the Legislative Assembly that will be elected in March 1994 and by its successor, to be elected three years later. It is therefore imperative that action be initiated during the life-time of the current Legislative Assembly.

15. An additional complication is that, under the Salvadorian Constitution, the executive branch may not initiate constitutional reforms. There are thus limits to the ability of the Government to ensure implementation of constitutional amendments. However, in my letter dated 20 May 1993, I insisted on the Government's obligation to take the necessary political action to promote implementation of those recommendations which required amendment to the Constitution. On 9 August 1993, President Cristiani informed the President of the Legislative Assembly of the Government's commitment to promote four constitutional reforms required by the Commission's recommendations (recommendations III A 1, 2 and 4 and III B 2). He indicated that he had informed the United Nations that it was not within the competence or authority of the executive branch to initiate constitutional reforms; he was accordingly referring the matter to the Legislative Assembly for its consideration.

16. While I understand the institutional limitations on the executive branch's ability to promote constitutional reforms before the legislature, I hope that the four constitutional amendments concerned, which address the need to decentralize powers and competence concentrated in the Supreme Court, will receive strong support from the Government. Reform of the Supreme Court is a significant element in the judicial reform recommended by the Commission on the Truth in order to ensure that never again will those responsible for acts of violence enjoy the impunity that characterized the recent conflict. I therefore urge the signatories of the Peace Accords, and the Government in particular, to take full advantage of the power given to COPAZ to prepare legislative drafts related to the Accords.

C. Recommendations to be implemented by the judiciary through the Supreme Court of Justice

17. The Commission on the Truth specifically referred to the point that some of its recommendations required action or initiatives by State organs other than the executive branch. The Commission stressed that the Government's undertaking to implement the recommendations meant that in such cases it must take the necessary action and initiatives to ensure that recommendations are put into practice by the appropriate State machinery (S/25500, annex, sect. V 3).

OBSERVATIONS

18. As is evident from the ONUSAL progress report, some action has been taken on a large number of the recommendations made by the Commission on the Truth. No implementation has, however, been reported with regard to the recommendations concerning dismissal and disqualification, those involving constitutional amendments and those on amparo (III B 2) and the jurisdiction of the Inter-American Court of Human Rights (III B 3). In most cases, only partial implementation has been effected as draft legislation is under consideration by Government agencies or legislative bodies or because preliminary action is being taken by the Government.

19. At a high-level meeting on 8 September 1993, in which ONUSAL participated, the Government and FMLN agreed on the need to step up the implementation process with a view to "sweeping the table clean" before 20 November 1993, when the electoral campaign is to start. I urge the Government, FMLN, COPAZ and other institutions involved in the implementation of the Commission's recommendations to make every effort to achieve this goal. To this end, I have asked my Special Representative, Mr. Ramirez-Ocampo, to assist those concerned in reaching agreement on target dates for the implementation of as many as possible of the outstanding recommendations.

20. I shall report further on this matter to the Security Council in due course.

Annex

Progress report on the implementation of the recommendations of the Commission on the Truth

I. RECOMMENDATIONS ARISING DIRECTLY FROM THE RESULTS OF THE INVESTIGATION*

I.A. Dismissal from their posts and discharge from the armed forces of officers who are named in the report and who are personally implicated in the perpetration or cover-up of the cases reported, or who did not fulfil their professional obligation to initiate or cooperate in the investigation and punishment of serious acts of violence

1. Eight military officers who fall within this category are still holding their positions (see paras. 11 to 13 of the main body of this report on the issue of dismissal and disqualification).

I.B. Dismissal of civilian officials in the civil service and the judiciary who are named in the report and who, acting in their professional capacity, covered up serious acts of violence or failed to discharge their responsibilities in the investigation of such acts

2. One civilian mentioned by the report is not at present an official of the civil service, although he represents the Government at COPAZ. Two judges and one forensic doctor were also mentioned in the report. Their dismissal falls within the jurisdiction of the judiciary (see paras. 11 to 13 of the main body of this report on the issue of dismissal and disqualification. It should also be noted that the evaluation of all judges by the National Council of the Judiciary has begun).

I.C. Disqualification by law from holding public office for persons referred to in the above recommendations and for any other persons implicated in the perpetration of the acts of violence described, including the civilians and members of the FMLN Command named in the findings on individual cases. The persons concerned should be disqualified from holding any public post or office for a period of not less than 10 years, and should be disqualified permanently from any activity related to public security or national defence

3. Under heading I C, the Commission also recommended that the bodies authorized to make appointments to public office refrain from appointing the persons referred to in section I C. In that respect, the nomination by the Government of the President of the Supreme Court of Justice to the Inter-American Legal Committee seems inconsistent with the spirit, if not the letter, of the Commission's recommendation (see paras. 11 to 13 of the main body of this report on dismissal and disqualification).

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* The headings refer to the relevant sections of document S/25500, annex, section V.

I.D.(a). Resignation of the current members of the Supreme Court of Justice to enable the constitutional reform concerning the election of judges to the Court to be implemented immediately

4. This recommendation is not binding on the Government, as it depends entirely on the willingness of the members of the Court to resign from their posts. They have publicly stated that they will not resign. It should be noted that the term of office of the present Court expires in June 1994. At that time the newly elected Legislative Assembly will designate the new Court in accordance with the provisions of the relevant articles of the Constitution, which are to be revised on the basis of the Peace Accords.

5. COPAZ has requested the Supreme Court to report on the legal foundations on which it bases its position regarding the issue.

I.D.(b). Amendment of the National Council of the Judiciary Act so that members of the Council can be dismissed only by the Legislative Assembly for precise legal causes

6. An inter-agency government team is preparing a draft amendment to the current law of the National Council of the Judiciary that sets precise legal causes for the dismissal of Council members but does not transfer this responsibility to the Legislative Assembly. The Government's interpretation is that such a transfer would require a constitutional amendment. ONUSAL is of the view, however, that a change in the National Council of the Judiciary Act (rather than in the Constitution) could resolve the problem raised in the recommendation, as the question at stake is addressed in article 49 of that Act.

7. COPAZ has decided to define precisely the causes for dismissal of members of the National Council of the Judiciary.

I.E. Amendment of the Career Judicial Service Act so that only those judges who, according to a rigorous evaluation made by the National Council of the Judiciary, have demonstrated judicial aptitude, efficiency and concern for human rights and offer every guarantee of independence, judicial discretion, honesty and impartiality in their actions, may remain in the career judicial service

8. A technical commission has been set up by the Legislative Assembly to introduce new amendments in the Career Judicial Service Act, which was partially reformed in 1992. It is still not possible to provide a definitive statement regarding the amendment of the Act, since the Commission entrusted with its formulation has not yet produced a draft.

9. It should be noted that the National Council of the Judiciary, which was elected by consensus and has been fully operational since June 1993, has recently begun to evaluate judges, having requested ONUSAL's cooperation in providing information about those who have incurred irregularities. The Supreme Court of Justice has stated that the evaluation undertaken by the Council strengthens the Judiciary and that it will be receptive to its conclusions.

10. COPAZ has requested the National Council of the Judiciary to report on the elements or criteria taken into consideration in the evaluation of judges.

II. ERADICATION OF STRUCTURAL CAUSES LINKED DIRECTLY TO THE ACTS EXAMINED

Full implementation of the peace agreements

11. The Secretary-General of the United Nations reports regularly to the Security Council and the General Assembly on the implementation of the peace agreements. In his last report to the Security Council, issued on 21 May 1993 (S/25812), he noted, among the achievements of the peace process, full respect by both parties for a prolonged cease-fire, the celebration of the formal end of the armed conflict and the conversion of FMLN into a political party. He also noted that significant progress had been made towards the establishment of civilian control over the military, the beginnings of the establishment of a civilian police force, the reunification of Salvadorian society and the democratization of national institutions. However, the Secretary-General also pointed out the need for further efforts to deal with several important components of the peace agreements, in particular the land transfer programme, the full establishment of the National Civilian Police and the recovery of assault weapons. The Secretary-General will submit his next report to the Security Council on implementation of the peace agreements in November 1993.

II.A. Reforms in the armed forces

12. Structural reforms of the armed forces have already been carried out in compliance with the peace agreements and following constitutional amendments, whose basic purpose has been to ensure their subordination to civilian power within the rule of law. Such reforms include mainly the removal of police functions from the military sphere of competence; the purification of the armed forces based on an evaluation of its members by an ad hoc commission; the establishment of new doctrinal principles and a new educational system; its reduction by approximately half the original size; the abolishment of the National Intelligence Department and its substitution by a new State Intelligence Agency under civilian control; the disbandment of rapid deployment infantry battalions that had been established as a consequence of the armed conflict; and the proscription of paramilitary forces or groups, including the disbandment of the civil defence and suppression of the territorial service, which has been replaced by a new system of reserves. These reforms have included a number of legal measures.

II.A.1. Appointment of a special committee of the Legislative Assembly to supervise the transition to the new model of the armed forces

13. As established in the Legislative Assembly's rules of procedure, the Assembly has the capacity to appoint special committees to investigate matters of national interest and to adopt the conclusions or recommendations it deems appropriate on the basis of their reports. No such special committee has been set up to fulfil the task mentioned in paragraph II A 1, but COPAZ has formally recommended to the Legislative Assembly that the existing Public Security and Defence Committee carry out that task on a priority basis.

II.A.2, 3 and 4. Comprehensive review of the military legislation in force

14. This recommendation is being implemented through the amendments and/or other legal measures already approved by the Legislative Assembly at the initiative of the Executive. At present the Assembly has before it a draft for a new Basic Law of National Defence submitted by the Executive. With respect to paragraphs II A 2 and 3, the draft under consideration meets the requirements of the peace agreements and includes the establishment of legal limits to the rule of due obedience. As far as paragraph II A 4 is concerned the Code of Military Justice, which would be the relevant law in this case, does not contain specific references to sanctions against the violations of human rights.

15. COPAZ has set itself the task of revising the current military legislation in order to ascertain whether any of its provisions contradicts the Constitution. COPAZ has also agreed to make proposals for legal amendments with respect to paragraphs II A 3 and 4, which include the establishment of a mechanism to deal with disobedience of illegal orders and sanctions against abuses of power and violations of human rights.

II.A.5. Inclusion of the study of human rights in the curricula of military schools

16. Studies of human rights, constitutional law and international humanitarian law have been included in the curricula of military schools and post-graduate military courses. The Human Rights Division of ONUSAL will provide cooperation for a global revision of existing curricula with a view to ensuring their overall compatibility with the new courses. The Human Rights Division actively participates in the holding of courses and seminars designed, inter alia, for military officers. These courses focus on human rights, military sociology and army-society relations. They are held at the Ministry of Defence, the Joint General Staff Headquarters, the College of Advanced Strategic Studies and other institutions. They enjoy the personal support of the new Minister of Defence who was, before assuming his present post, responsible for the development and implementation of these critical components of the Peace Accords.

17. On 20 September 1993, the Division of Human Rights submitted to the Minister of Defence for his consideration a project entitled "Project of cooperation between the Division of Human Rights of ONUSAL and the Doctrine and Military Training Command". Through this project, the Human Rights Division would provide technical support to the military and civilian faculty of the military training centres. It would also organize conferences and an international seminar with the participation of foreign experts.

18. Finally, an in-depth revision of military curricula (see also sect. III B, recommendation 15 of the Human Rights Division) has been undertaken by the Academic Council of the Military College. As agreed in COPAZ, the Academic Council of the Military College consists in four military members and four civilian members, in addition to the Director of the College who presides over the Council.

19. COPAZ has requested from the Minister of Defence a report on the issue referred to in this recommendation.

II.A.6. Military training courses abroad based on a doctrine of democracy and respect for human rights

20. This recommendation is being implemented as part of the reforms of the armed forces, through training courses in several democratic countries. COPAZ took note of information provided by the Government on existing agreements with several countries regarding technical training of military personnel.

II.A.7. Priority to be given to the eradication of any relationship between members of the armed forces and paramilitary or illegal groups

21. The armed forces Court of Honour was created as stipulated in the peace agreements (chap. I 12 C). Composed of seven officers (one of each rank, starting with general and ending with second lieutenant), with a one-year mandate, the Court's internal by-laws were submitted to ONUSAL in 1992. As stipulated in the agreements, the Court tries acts that are contrary to military honour without prejudice to the judicial system.

22. ONUSAL has not detected any institutional relationship between members of the armed forces and paramilitary or illegal groups.

23. COPAZ has requested a report from the Government on this issue.

II.B. Reforms in the area of public security

24. Important reforms in the area of public security have been or are being implemented in compliance with the peace agreements.

25. Since its establishment, the functioning of the National Academy for Public Security has improved. At present, six classes at the basic level have graduated from the Academy. As a consequence, approximately 2,000 officers of the National Civil Police are now deployed in five departments of El Salvador. Partial deployment has also taken place in the capital and in Usulután. These officers are now under the orders of permanent commanders.

26. A monthly admission of approximately 400 students at the basic level is planned for the remainder of the transition period until the National Civil Police is fully deployed. As a result, a total of about 5,700 police will have graduated by July 1994. The second Academy course at the executive and senior levels will begin shortly. It will train a total of 240 police officers.

27. According to a plan presented by the Government, the National Civil Police will be deployed in 8 to 10 departments by the end of 1993. Its complete deployment throughout the 14 departments of El Salvador is expected to conclude between August and October 1994. The Government has informed COPAZ of its plan for the deployment of the functional divisions of the National Civil Police. Training of the future personnel of the Traffic and Finance Divisions has already started at the Academy. Their deployment should start in October and November 1993, respectively. An operational plan for the phasing out of the National Police was submitted by the Government on 11 October 1993.

28. An adequate allocation of resources, properly supported by continuous technical and financial assistance from the international community, is necessary to ensure completion of this key element of the peace agreements.

29. In recruiting members of the National Civil Police, a balance is being maintained between candidates from the FMLN and from the National Police. Each category has a 20 per cent representation, at the basic, executive and senior levels. The remaining 60 per cent of candidates are made up of personnel that is entirely civilian in character. The appointment on 1 June 1993 of a former army captain and Head of the Executive Antinarcotics Unit to the position of Deputy Director of the National Civil Police was a cause for concern. The Government informed ONUSAL that the ex-captain had resigned from the army prior to his appointment, which was political and did not constitute a career post. It also pointed out his extensive police training, an important factor given the requirements of his post. FMLN objected to the appointment. The matter was settled on 8 September when FMLN accepted the appointment on an exceptional basis and on the condition that it should not set a precedent. The two other political appointees of the National Civil Police, namely the Director-General and the Deputy for Management, are civilians.

30. In accordance with the supplementary agreements reached on 22 December 1992, members of the Executive Antinarcotics Unit and the Criminal Investigation Commission could be transferred to the corresponding National Civil Police functional divisions after an evaluation to be verified by ONUSAL and additional courses at the National Academy for Public Security. Evaluation of personnel and additional courses started in August. ONUSAL began verification of that process at the request of the Government on 10 September. Some members of the Executive Antinarcotics Unit have already joined the National Civil Police even though ONUSAL has not yet been able to conclude its verification task. In particular, information requested from the Government such as the list of Executive Antinarcotics Unit and Criminal Investigation Commission members as of 22 December 1993 and other documentation have not yet been handed over to ONUSAL. ONUSAL has also made recommendations regarding the transfer process, to which no answer has been given yet.

31. COPAZ has called on the Government to continue with efforts to respect the civilian character of the National Civil Police.

II.C. Investigation of illegal groups

32. Cases of arbitrary executions over the past few months have given ground for concern that illegal groups are operating, whose methods seem to repeat behavioural patterns prevailing in the past. As explained below, the Government has agreed to give priority to the investigation of arbitrary executions. In compliance with this decision, a mechanism has been set up whereby the ONUSAL Division of Human Rights provides the list of cases requiring special investigation to the Minister of the Presidency, the Minister of Justice and the Criminal Investigation Commission.

33. It should be noted that the Criminal Investigation Commission will be dissolved shortly and integrated into the National Civil Police as the "Division for Criminal Investigation". Its members are to be transferred to the National Civil Police according to a procedure outlined in section II B above. The

Division of Criminal Investigation of the National Civil Police, under the functional direction of the Attorney General's Office and in coordination with ONUSAL, will give high priority to investigating illegal groups.

34. Measures helping to prevent the reappearance of illegal groups included the disbanding of the Civil Defence and the former territorial service, which is to be replaced by a new system of armed forces reserves. Discussions within COPAZ on a draft law regulating private security entities, which have been temporarily set aside owing to other priorities, are expected to resume shortly and produce a draft to be submitted to the Legislative Assembly. Prior to this, COPAZ is concluding a draft law for the control of arms. The Government has prepared its own draft, which was recently sent to the Legislative Assembly for approval (see also sect. III B).

35. An in-depth investigation of the phenomenon of illegal groups, with a view to impeding its resurgence, constitutes a priority that has been consistently considered by COPAZ. This was reflected in its recent communication to the President of the Republic, in which COPAZ requested that the President use all the means at his disposal speedily to address the issue.

III. INSTITUTIONAL REFORMS TO PREVENT THE REPETITION OF SUCH ACTS

III.A. Administration of justice

Further judicial reform

36. Several recommendations under this heading require constitutional amendments. A letter from the President has been sent to the Legislative Assembly requesting consideration of recommendations III A 1, 2, 4 and III B 2. According to the Salvadorian Constitution, amendments to the fundamental law of the country can only be proposed by a minimum of 10 members of the legislature. On the issue of constitutional reforms, see paragraphs 14-17 of the main body of the report.

37. However, as far as the issue of administrative accountability of judges to the National Council of the Judiciary (III A 3) is concerned, contrary to ONUSAL's point of view that a constitutional amendment would be required, the President is of the opinion that the recommendation could be satisfied through legal reforms.

38. Other recommendations for judicial reforms that do not require constitutional amendments are being gradually implemented. Drafts prepared by the Ministry of Justice for a new Code of Criminal Procedure and for a law regarding juvenile delinquents are being submitted to public consultation. The proposed Procedural Code provides for oral arguments and public access to all phases of the judicial process, which guarantees the accused's right to defence. Drafts for a new Criminal Code and a new penitentiary law are currently under consideration. Several amendments to existing laws have been approved by the Legislative Assembly. Others are under discussion or in the process of being submitted by the Executive for approval.

III.A.1. Deconcentration of functions vested in the Supreme Court and its President

39. Implementation of this recommendation requires constitutional amendments (see paras. 14-16 of the main body of this report on the issue of constitutional reform).

40. The Government has informed ONUSAL that a commission was set up by the judiciary to promote administrative reforms aimed at the decentralization of Supreme Court's functions.

III.A.2. Appointment and removal of judges by the National Council of the Judiciary

41. Implementation of this recommendation requires a constitutional amendment (see paras. 14-16 of the main body of this report on the issue of constitutional reform).

42. However, the process for the selection of lawyers for their subsequent appointment as judges of peace by the Supreme Court of Justice has already been undertaken by the newly appointed National Council for the Judiciary.

III.A.3. Administrative accountability of judges to the National Council of the Judiciary

43. Implementation of this recommendation would require constitutional amendments to the Basic Law of the Judiciary - on which no initiative has been taken - and the Career Judicial Act, which is being studied by the Technical Commission set up to this effect by the Legislative Assembly and mentioned in section I E above.

III.A.4. Special independent body responsible for authorizing and regulating the professions of lawyer and notary

44. Implementation of this recommendation requires a constitutional amendment (see paras. 14-16 of the main body of this report on the issue of constitutional reform).

III.A.5. Creation of new courts and improvement of judges' salaries

45. The Supreme Court of Justice had been setting up new courts and improving the salaries of judges before the release of the report of the Commission on the Truth. The number of courts has increased considerably since 1989. For example, Courts of first instance, totalling a number of 87 in 1989, reached 120 in March 1993. The salaries of judges have almost doubled since 1989. Budget allocations to the judiciary are being gradually increased as required by the peace accords.

46. During 1992, district courts (juzgados de paz) Nos. 9 and 10 were created in San Salvador and juvenile and civil courts in the surrounding areas (Soyapango and San Marcos); also created were the third civil chamber (first central sector), the third penal chamber (first central sector), two chambers of

the second instance (second and third eastern sector), the second civil court in San Miguel and the third criminal court in San Miguel.

III.A.6.(a)-(d). Reinforcement of the application of the right to due process

47. Implementation of this recommendation is a continuous process. Important steps in this direction have been approved by the Legislative Assembly at the Executive's recommendation, such as removing the requirement for consultations by judges of a lower court to those of a higher rank, and approving reforms proposed by the Ministry of Justice in the current Code of Criminal Procedure with regard to the rights of the accused. The right to due process is further reinforced in the drafts for the new Criminal Code and Code of Criminal Procedure. Several administrative measures are being implemented or in the process of being approved for the same purpose.

48. With regard to subparagraph (a), the Ley de Defensoría Pública prohibits police interrogations in the absence of lawyers. Furthermore, the Ministry of Justice has prepared a draft law expressly invalidating extrajudicial confessions; subparagraph (b) is included in the draft Code of Criminal Procedure; with regard to subparagraph (c), although progress is being made, the National Police is not complying fully with the requirements concerning maximum time-limits; subparagraph (d) is covered by the instruments referred to in connection with subparagraphs (a) and (b).

III.A.7. Priority to be given to the Judicial Training School

49. The Judicial Training School is now under the jurisdiction of the National Council for the Judiciary, which has actively undertaken its improvement and strengthening and is seeking international technical assistance. The Government has supported these efforts.

50. The National Reconstruction Programme projects external financial requirements for the School for the period 1993-1996 in the amount of US$ 12 million, of which $3.9 million is available ($0.9 million from the Government of El Salvador and $3 million from USAID), leaving a financial gap of $8.1 million.

III.B. Protection of human rights

51. As indicated below, a good number of these recommendations are in the process of being implemented and others are the subject of ongoing consultations. The Government and the ONUSAL Human Rights Division hold regular bilateral meetings to discuss these issues.

52. Following is a detailed evaluation of the state of implementation of the recommendations of the ONUSAL Human Rights Division:

(a) Ratification or adherence to international human rights instruments, including the conventions of the International Labour Organisation (ILO). The Government has expressed its willingness to ratify or adhere to human rights conventions in the near future, with the exception of the one recognizing the compulsory jurisdiction of the Inter-American Court of Human Rights. With regard to the ILO conventions, the Government has indicated that they will be

processed within the framework of the consultations being carried out in the Forum for Economic and Social Consultation;

(b) Structural and functional reform of the judiciary. Although implementation implies constitutional reforms, some policy-setting reforms are being effected in that direction, of which some have already been approved by the Legislative Assembly and others are being debated within the judicial community (see also sect. III A 6);

(c) Establishment of a special commission of inquiry to investigate arbitrary executions. While the Government has expressed its willingness to give priority to the investigation of those cases indicated by ONUSAL and NGOs as possible arbitrary executions, it has stated the impossibility of creating a special commission, given the fact that such an investigative mechanism is not provided for in the country's institutional structure. It has therefore been agreed to address the substance of the recommendation by establishing a mechanism of investigation of those cases which, in the opinion of ONUSAL, warrant it;

(d) Measures to make habeas corpus and amparo effective and accessible. The Government has submitted for national debate a draft law amending the legislation on habeas corpus. In general terms, the draft represents a positive step, although it could be expanded to offer more effective protection. A regulation that would fully guarantee habeas corpus would imply constitutional reforms to guarantee wide access by those affected to the jurisdictional organ that is currently limited to the Constitutional Hall of the Supreme Court. Implementation of the recommendation on amparo is pending, as no proposals have as yet been made;

(e) Compensation fund for victims. The Government is now carrying out a preliminary evaluation of this recommendation, which includes a study of the various ways of establishing the Fund (see also sect. IV below). The non-governmental Human Rights Commission of El Salvador has prepared a draft law for the creation for a special fund for reparation and national reconciliation, which it has submitted to the Legislative Assembly. The draft contains constructive elements that should be taken into account in the recommendation's implementation;

(f) Improvement of the composition and powers of the National Council of the Judiciary and independence of the Judicial Training School. This recommendation implies amendments to the National Council of the Judiciary Act and to the Constitution. The procedure for its implementation is yet to be initiated;

(g) Elimination of extrajudicial confession. The new Ley de Defensoria Publica and the changes in the Procedural Criminal Code and the Basic Law of the Public Ministry in relation to the control of the defence of the accused has resulted in a lessening of the incidence of extrajudicial confessions. The Ministry of Justice has also prepared a draft law specifically on the invalidation of extrajudicial confession, the adoption of which, following consultations with the judicial community and its presentation to the Legislative Assembly, would constitute an important step towards the implementation of this recommendation (see also sect. III A 6);

(h) Definition of torture and enforced disappearance as offences in special criminal legislation. The draft new Criminal Code, prepared by the Ministry of Justice, defines torture as a crime against the fundamental rights of the individual. Also defined as a crime is enforced disappearance itself, enforced disappearance carried out by individuals in compliance with official orders and enforced disappearance that implies responsibility for allowing or agreeing to the commission of that crime. Implementation of the recommendation began with the proposal of the Ministry of Justice and will culminate in the adoption of the corresponding law (see sect. III B 6);

(i) Legislation regulating the conduct of law enforcement officials. The Ministry of Justice has taken a first step by preparing the draft law on Rules for Administrative Detention aimed at avoiding excesses and abuses in the use of physical force in detention through the adoption as internal law of the Republic of the Code of Conduct for Law Enforcement Officials, adopted by the United Nations General Assembly (see also sect. II B 4 (a));

(j) Abolition of the practice of arbitrary detention for petty misdemeanours. The implementation of this recommendation is being prompted by ONUSAL in coordination with the National Police, the National Civil Police, the Supreme Court and the municipalities. Pending the adoption of legal reforms, various verification processes have been carried out and a police instructive was adopted with a view to diminishing this type of arbitrary detention (see also sect. III B 4 (a));

(k) Temporary application of the Act governing the procedure for administrative detention or the imposition of administrative fines. The police instructive mentioned in the previous point was conceived with a view to applying the law on procedures for the imposition of arrest or administrative fine (Legislative Decree No. 457) instead of obsolete provisions of the Police Law of 1886 or illegal procedures. A programme for the National Civil Police, National Police, Municipal Police and the Executive Antinarcotics Unit establishing compulsory application of Decree No. 457 in the transition period pending the repeal of the Police Law of 1886 and the removal from the jurisdiction of the police of petty misdemeanors is urgently needed;

(l) Amendment of the disciplinary regime under the Career Judicial Service Act so that the Court or its President can investigate formally any irregularities or violations of due process. ONUSAL has been carrying out consultations with the Supreme Court of Justice for the application of this recommendation, the implementation of which is indispensable for assuring the effectiveness of the guarantees for due process, especially with regard to the right to a defence, to be judged by a competent court in a reasonable time-frame and to an impartial trial;

(m) Authorization of a visit by the ILO Committee on Freedom of Association. The Committee will carry out the pending visit, which will mean compliance with the recommendation;

(n) Investigations by the Supreme Court of Justice of violations of due process. The disciplinary regime under the Career Judicial Service Act has not yet been modified with a view to allowing the Supreme Court of Justice or its President to investigate ex officio and efficiently the irregularities or

violations of the right to due process, particularly those pointed out by the National Counsel for the Defence of Human Rights Office. The Human Rights Division has conveyed to the Supreme Court a list of cases in which the responsibility of some judges appears involved. The Court is currently investigating them;

(o) Granting of legal recognition to associations and trade unions. In spite of some advances within the framework of the consulting mechanism, compliance with this recommendation is still pending;

(p) Military training. This recommendation is being applied and by its very nature is a process which should be ongoing. The Human Rights Division will propose a specific cooperation programme to the Armed Forces in this regard (see also sect. II A 5);

(q) Recovery of military weapons. Partial implementation of this recommendation has begun. The Government has committed itself to collecting the remaining arms, which are located in various institutions, and to replacing them by other, appropriate ones, by 20 November. The remaining military arms in the possession of civilians or ex-military personnel will be collected following the adoption of the "Law for the control of arms, munitions, explosives and similar articles", a draft of which was submitted by the Government to the Legislative Assembly on 25 August 1993. Another draft for the same law, prepared by COPAZ, is being debated for subsequent submission to the Assembly;

(r) Budgetary autonomy of the National Counsel's Office. This recommendation should be carried out within the general accounting norms of the State. Nevertheless consultations between the Government and the Counsel for compliance have not yet begun;

(s) Facilities for and non-obstruction of NGO activities. Cases of NGOs seeking legal recognition are still pending.

III.B.1. Strengthening of the Office of the National Counsel for the Defence of Human Rights

53. The National Counsel for the Defence of Human Rights is implementing the recommendations according to its established timetable. Regional offices have already been established in three cities (Santa Ana, San Vicente and San Miguel). A formal cooperation agreement has been signed with ONUSAL.

III.B.2. Measures to make the remedies of amparo and habeas corpus truly effective: broadening the competence of judges and making express provision that these remedies cannot be suspended as guarantees under any circumstances

54. In accordance with existing constitutional provisions (art. 29), the guarantee of amparo and habeas corpus cannot be suspended even in a state of emergency.

55. With regard to habeas corpus, draft legislation on this remedy has been prepared by the Ministry of Justice. It meets the requirements regarding

protection of personal freedom and other related fundamental rights and extends the jurisdiction of habeas corpus to courts of appeal.

56. An amendment to the Constitution is required to extend such jurisdiction to courts of first instance and justices of the peace (see paras. 14-16 of the main body of this report on the issue of constitutional reform).

57. Since no proposal has been adopted to date on amparo, the implementation of this recommendation is pending in its entirety (see also sect. III B, recommendation 4).

III.B.3. Constitutional force of human rights provisions and of international human rights instruments

58. The Government has informed ONUSAL that it will promote ratification, with the reservations that may apply on constitutional grounds, to the following international human rights instruments: Optional Protocol of the International Covenant on Civil and Political Rights; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Inter-American Convention on the Prevention and Punishment of Torture; Supplementary Protocol to the Inter-American Convention on Human Rights regarding economic, social and cultural rights and Inter-American Convention on Political Rights of Women.

59. ONUSAL has also been informed by the Government that it will not promote acceptance of the jurisdiction of the Inter-American Court of Human Rights.

60. Section III B, recommendation 1, also refers.

III.B.4.(a)-(c). Changes in the system of administrative detention

61. The Minister of Justice has informed the Legislative Assembly that a drastic reduction of administrative detention is proposed in draft legislation to be submitted to the Assembly shortly.

62. With regard to subparagraphs (a) and (b), the Ministry of Justice has prepared the following two drafts: the draft rules for detention by police (which seeks to avoid excessive use of violence during arrests). The draft reflects the Code of Conduct for Law Enforcement Officials; and the draft on the reduction of time-limits for administrative detention so that the suspect can be handed over to judicial authorities within 24 hours.

63. The objective set forth in subparagraph (c) can be reached only by repealing the Police Act of 1886. The Government has agreed to it, but no draft legislation has been prepared yet. On the other hand, the Ministry of Justice has proposed drafting a law whereby the jurisdiction of the police for petty misdemeanors would be attributed exclusively to the justices of the peace, in an effort to preserve the principle of monopoly of jurisdiction. The Human Rights Division is cooperating with the Ministry in this regard.

III.B.5. Expansion of the system of information on detainees with the participation of the Office of the National Counsel for the Defence of Human Rights

64. The present information system of the Supreme Court is considered to reflect the state of the art. The extension of this system to the National Counsel for the Defence of Human Rights should be coordinated with the Court.

65. The computerized system of the Supreme Court concerns all judicial and non-judicial detainees in the country. It is available to the National Counsel for the Defence of Human Rights, which is organizing its own system. However, the Counsel is not being informed of all arrests, as stipulated by the Constitution of the Republic (art. 194.I.5).

III.B.6. New categories of crimes

66. The draft Criminal Code being prepared by the Ministry of Justice includes new criminal offences committed with the direct or indirect support of the State apparatus. Among the crimes relating to the fundamental guarantees of persons is torture by officials. It provides for the case when an official having the power to avoid or prevent torture fails to do so. Also proscribed are genocide and enforced disappearance of a person by an official. Sanctions are provided for anyone guilty of permitting the commission of these crimes by others. ONUSAL is evaluating these amendments.

III.B.7. Material compensation for victims of human rights violations

67. The existing Criminal Code envisages compensation for damages caused by the commission of a crime through the "civil consequences of a crime" following the established norms for attachment. Under the draft Criminal Code, compensation for damages will be made through the so-called "civil consequences of a punishable act".

68. The draft Code of Criminal Procedure establishes a procedure for compensation through petitioning the court that handed down the sentence following the criminal process. If the court considers the procedure admissible, it will give the order for compensation of damages, following a settlement hearing. Although the proposed reform does not in itself constitute "a simple, swift and accessible remedy", as recommended by the Commission on the Truth, it does have the advantage over the existing procedure that, being a special process, indemnization can be better evaluated and can even result in settlement in specific cases.

69. Notwithstanding the above, it would be desirable that, as recommended by the Commission, legislation could be passed differentiating between the procedure for compensation as envisaged in the Codes and that dealing with compensation resulting from human rights violations.

III.B.8. Ratification of international instruments and recognition of the compulsory jurisdiction of the Inter-American Court of Human Rights

70. Comment on section III B 3 applies.

III.C. National Civil Police

III.C.1. Putting into practice the investigation mechanism within the National Civil Police and dissolving the Commission for the Investigation of Criminal Acts

71. Comment on section II C applies.

IV. STEPS TOWARDS NATIONAL RECONCILIATION

IV.A. Special fund for the compensation of victims

72. Before taking a final decision, the Government is currently engaged in carrying out a feasibility study aimed at (a) identifying potential beneficiaries of a special fund; (b) determining the cost of such a fund; and (c) investigating the possibility of obtaining the required resources (see sect. III B, recommendation 5).

IV.B. Construction of a national monument bearing the names of the victims, recognition of the good name of the victims and institution of a national holiday

73. The Government is selecting a site for the construction of a national monument. The good name of the victims and the message of reconciliation is reflected in public statements by both parties. The Legislative Assembly has instituted 16 January as a national holiday.

IV.C. Forum for Truth and Reconciliation

74. In its consideration of the recommendations, COPAZ is likely to take a decision shortly.

IV.D. International follow-up action

75. The United Nations is providing constant follow-up action and will continue to do so.